

**MASTER AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
SEABURY AIRLINE PLANNING GROUP, LLC**

THIS MASTER AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter "CITY"), and SEABURY AIRLINE PLANNING GROUP, a Virginia limited liability company authorized to do business in California (hereinafter "CONSULTANT").

THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1.     SCOPE OF SERVICES.**

CONSULTANT shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

**SECTION 2.     TERM OF MASTER AGREEMENT.**

- A.     The term of this MASTER AGREEMENT shall be from date of CITY Council approval to three (3) years after date of CITY Council approval, inclusive, subject to the provisions of Subsection 2B, C and SECTION 11 of this MASTER AGREEMENT.
  
- B.     CITY, through its Director of Aviation ("DIRECTOR"), may extend the initial term of the MASTER AGREEMENT for two (2) additional one-year periods (each an "Option Period"). The DIRECTOR shall exercise the option by written Notice of Exercise of Option in the form set forth in EXHIBIT G at least thirty (30) days

prior to the expiration of this MASTER AGREEMENT. All terms and conditions of this MASTER AGREEMENT shall remain in full force and effect during the Option Period.

- C. CITY's funding of this MASTER AGREEMENT shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. CITY's exercise of an Option Period is contingent upon appropriation of funds by the CITY.

### **SECTION 3. SCHEDULE OF PERFORMANCE.**

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT B, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this MASTER AGREEMENT.

### **SECTION 4. COMPENSATION.**

- A. The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Nine Hundred Seventy Five Thousand Dollars (\$975,000). The rate and schedule of payment is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. CONSULTANT agrees that in the performance of this MASTER AGREEMENT, CONSULTANT shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this MASTER AGREEMENT:
1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.

2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
  - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
  - b. High risk of cross-contamination with non-potable water.
  - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. CONSULTANT acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2(c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this MASTER AGREEMENT.

**SECTION 5. METHOD OF PAYMENT.**

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

**SECTION 6. INDEPENDENT CONTRACTOR.**

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which

accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

**SECTION 7. ASSIGNABILITY.**

The parties agree that the expertise and experience of CONSULTANT are material considerations for this MASTER AGREEMENT. CONSULTANT shall not assign or transfer any interest in this MASTER AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this MASTER AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 8. INDEMNIFICATION.**

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this MASTER AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

**SECTION 9. INSURANCE REQUIREMENTS.**

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a

copy of said policies, certificates and/or endorsements before work commences under this MASTER AGREEMENT.

**SECTION 10. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this MASTER AGREEMENT.

**SECTION 11. TERMINATION.**

- A. CITY shall have the right to terminate this MASTER AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this MASTER AGREEMENT immediately upon written notice.
- C. CITY's Director of Aviation is empowered to terminate this MASTER AGREEMENT on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this MASTER AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 12. GOVERNING LAW.**

CITY and CONSULTANT agree that the law governing this MASTER AGREEMENT shall be that of the State of California.

**SECTION 13. COMPLIANCE WITH LAWS.**

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONSULTANT shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

**SECTION 14. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.**

CONSULTANT agrees that, in the performance of this MASTER AGREEMENT, CONSULTANT shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY'S website at the following link: <http://www.sanjoseca.gov/?nid=1774>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)

- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

**SECTION 15. CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this MASTER AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

**SECTION 16. OWNERSHIP OF MATERIALS.**

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

**SECTION 17. WAIVER.**

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this MASTER AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this MASTER AGREEMENT.

**SECTION 18. CONSULTANT'S BOOKS AND RECORDS.**

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this MASTER AGREEMENT.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this MASTER AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this MASTER AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this MASTER AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this MASTER AGREEMENT. CONSULTANT acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this MASTER AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.



- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

#### **SECTION 19. CONFLICT OF INTEREST.**

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this MASTER AGREEMENT. CONSULTANT's employees assigned to perform services as specified in EXHIBIT A of this MASTER AGREEMENT ("CONSULTANT's Assigned Employees") shall file an ASSUMING Office Disclosure Statement of Economic Interests (Form 700) as specified in EXHIBIT E, entitled "DISCLOSURE STATEMENT", which is attached hereto and incorporated herein. Such statement shall be filed within thirty (30) days of the date of this MASTER AGREEMENT and annually thereafter by the first of April. Upon termination of this MASTER AGREEMENT, CONSULTANT shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700). CONSULTANT shall file the Form 700 with CITY's Clerk and submit a copy to Kim Becker Aguirre. In addition to disclosure of financial interests, each employee is also subject to disqualification under the conflicts of interest prohibitions in the Political Reform Act §§ 87100 et seq. and Government Code Section 1090.

#### **SECTION 20. GIFTS.**

- A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this MASTER AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this MASTER AGREEMENT for such breach as provided in SECTION 11 of this MASTER AGREEMENT.

**SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.**

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this MASTER AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 22. SPECIAL PROVISIONS.**

Special provisions, if any, to this MASTER AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

**SECTION 23. NOTICES.**

All notices and other communications required or permitted to be given under this MASTER AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

Kim Becker Aguirre  
Director of Aviation  
Norman Y. Mineta San José International Airport  
1701 Airport Boulevard, Suite B-1130  
San José, CA 95110-1206

To CONSULTANT:

Joel Antolini  
Sr. Vice President  
Seabury Airline Planning Group, LLC  
1775 Wiehle Avenue, Suite 340  
Reston, VA 20190

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 24. VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**SECTION 25. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.**

This MASTER AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the

terms specified in the body of this MASTER AGREEMENT, the terms specified in the body of this MASTER AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This MASTER AGREEMENT may be modified only by a written amendment duly executed by the parties to this MASTER AGREEMENT.

**SECTION 26. SUBCONTRACTORS**

- A. Notwithstanding Section 7 above, CONSULTANT may use subcontractors in performing the work under this MASTER AGREEMENT. Each subcontractor must be approved by the DIRECTOR prior to commencing any work under this MASTER AGREEMENT. All subcontractors approved by CITY shall report to and be subject to the direction and control of CONSULTANT and CITY shall coordinate any work with such subcontractors through CONSULTANT.
- B. The CITY shall provide compensation directly to the CONSULTANT in accordance with the terms of this MASTER AGREEMENT for work performed by the CONSULTANT and its subcontractors. CONSULTANT shall be responsible for directing the work of the above-named subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall change or add subcontractors only with the written approval of DIRECTOR or authorized representative.

**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation of the State of California

\_\_\_\_\_  
KEVIN FISHER  
Senior Deputy City Attorney

By \_\_\_\_\_  
Name: TONI J. TABER, CMC  
Title: City Clerk

“CONSULTANT”

SEABURY AIRLINE PLANNING GROUP, LLC,  
a Virginia limited liability company authorized  
to do business in California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFICATE OF AUTHORITY**  
**SEABURY AIRLINE PLANNING GROUP, LLC**

This certificate shall be executed by the manager of the limited liability company.

I, \_\_\_\_\_, certify that I am the manager of the  
(Name of Manager)

limited liability company named in the attached agreement;

that \_\_\_\_\_ signed the agreement on behalf  
(Name of Person that Signed Agreement)

of the limited liability company as the \_\_\_\_\_ of the  
(Title of Person that Signed the Agreement)

of the limited liability company; and that the agreement was duly signed for and on  
behalf of the company by authority of its members, and is within the scope of its  
limited liability company powers.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Manager

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**

The CONSULTANT shall provide to CITY's Norman Y. Mineta San José International Airport ("SJC" and "Airport") services related to air service development.

The CONSULTANT's services shall be provided as requested by the Airport's Director of Aviation ("DIRECTOR") or the DIRECTOR's representative, on an as needed basis, as set forth in a specific Approved NTP (as defined below).

**1. GENERAL SERVICES.**

CONSULTANT will provide the general types of services set forth below. This list of services is meant to be illustrative in nature only and is not meant to be a complete or exclusive list.

- Provide supporting role in airline outreach for SJC;
- Review recent SJC discussions/power point presentations made to international and domestic air carriers;
- Update demographics/economic indicators supporting airline outreach as needed;
- Conduct meetings with City management, Office of Economic Development staff and the Silicon Valley Leadership Group to validate findings and generate support for SJC's strategy;
- Prepare presentations to be shared with the Director of Aviation and Airport senior staff prior to meeting all airlines;

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Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

Council Agenda: August 19, 2014  
Item No.: 2.8a(1)

**DRAFT-Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final contract.**

- Represent SJC and conduct one-on-one airline meetings for SJC at airline/airport networking events, including, but not necessarily limited to, World Routes, Network USA and ACI-NA JumpStart;
- Focus on international carriers already in the pipeline;
- Focus on changing legacy carriers' mindsets regarding Bay Area traffic, service and market share;
- Organize/coordinate meetings at airline headquarters and reciprocal visits at SJC;
- Forecast domestic and international routes and assess route profitability;
- Analyze fares and pricing and develop new service prioritization plans; and
- Prepare presentations to targeted carriers.

## 2. **NOTICE TO PROCEED.**

- A. **General:** The CONSULTANT will provide professional services to the CITY pursuant to a notice to proceed ("Notice to Proceed"). Each Notice to Proceed will describe the tasks, objectives, services and deliverables (collectively "Work") the CONSULTANT must provide, the time limit within which the CONSULTANT must complete the Work, and the compensation for the Work.
- B. **Commencement of Work:** The CONSULTANT can not start performing any Work until the DIRECTOR has executed a Notice to Proceed ("Approved NTP").
- C. **Obligation to Issue:** The CITY has no obligation to issue any Approved NTP's under this MASTER AGREEMENT. The CITY may issue any number of Approved NTP's provided that the sum of the maximum



compensation of all Approved NTP's can not exceed the  
COMPENSATION set forth in Section 4 of the MASTER AGREEMENT.

D. **Unapproved Work:** Any Work performed by CONSULTANT not pursuant to an Approved NTP shall be at no cost to the CITY.

E. **DIRECTOR's Request to Prepare Draft Notice to Proceed.**

CONSULTANT shall submit a draft Notice to Proceed to CITY's project manager ("Project Manager") in either hard copy or electronic format. To facilitate the CONSULTANT's preparation of the draft Notice to Proceed, the CONSULTANT and Project Manager may discuss, as they determine is appropriate, the various terms and conditions to be included in the draft Notice to Proceed.

F. **Specific Requirements.** Subject to the terms and conditions of this MASTER AGREEMENT, the CONSULTANT and the CITY will negotiate the specific requirements of each Approved NTP.

G. **Approved NTP's:** The Approved NTP may include all or a portion of the General Services set forth in this Exhibit A. The Approved NTP must include, but is not limited to, the following:

- The proposed scope of Work;
- The names any subcontractors the CONSULTANT would use and the portion of Work they would perform;
- A time schedule to complete the Work;

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- Fees, costs, and rates for providing the Work, including any Reimbursable Expenses;
- Any other information requested by the DIRECTOR.

H. **Compensation.** Each Approved NTP will specify the maximum amount payable to the CONSULTANT for all professional fees, costs and expenses related to the CONSULTANT providing the Work (“Approved NTP Compensation”). The CONSULTANT shall complete all Work required by the Approved NTP for no more than the Approved NTP Compensation.

1. Each Approved NTP will identify whether the CITY will pay the CONSULTANT for the Work on a time-and-materials basis or on a fixed-fee (or lump-sum) basis.
2. Each Approved NTP will identify whether the CONSULTANT’s invoice will be submitted monthly, upon the completion of a task or group of tasks under the Approved NTP, or upon the completion of all Work set forth in the Approved NTP.

I. **Incorporation of Terms and Conditions:** Each Approved NTP incorporates the terms and conditions of this MASTER AGREEMENT, and becomes a part of this MASTER AGREEMENT.

1. **No Conflicts:** An Approved NTP must be consistent with – and can not alter – the terms and conditions of this MASTER AGREEMENT.

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2. **Agreement Controls:** The terms and conditions of this MASTER AGREEMENT control over the terms and conditions contained in an Approved NTP – even if the Approved NTP expressly states that it is intended to control. Any conflicting terms and conditions in an Approved NTP are invalid and unenforceable.
- J. **Performance:** Subject to Subsection I above, the CONSULTANT must perform the Work in accordance with the specific requirements of the Approved NTP. The CONSULTANT must coordinate and cooperate with CITY staff, consultants and contractors in performing the Work, and must perform the Work to the DIRECTOR's satisfaction.
- K. **Subcontractors.** Each Approved NTP will state whether or not the CONSULTANT can use subcontractors to provide any part of the Work. If the Approved NTP authorizes the use of one or more subcontractors, then it will identify the name of each such subcontractor and the portion of Work each such subcontractor will perform. The DIRECTOR's prior written consent is required for the CONSULTANT to remove, replace or add to the subcontractor identified in the Approved NTP.
- L. **Status Updates.** CONSULTANT shall provide regular updates and status reports to the Project Manager.
- M. **DIRECTOR's Authority.** The DIRECTOR reserves the right to modify, reject, cancel or stop any and all plans, projects, programs, schedules, and work in progress, and in such event, CONSULTANT shall immediately take proper steps to carry out the DIRECTOR's instructions.

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

Work shall commence immediately upon execution of this MASTER AGREEMENT.

The estimated time for completion is three (3) years after execution of this MASTER AGREEMENT. Specific Approved NTP schedules of performance are covered under the Approved NTP.

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Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

Council Agenda: August 19, 2014  
Item No.: 2.8a(1)

**DRAFT-Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final contract.**

**EXHIBIT C**  
**COMPENSATION**

**1. GENERAL PROVISIONS.**

CITY agrees to compensate CONSULTANT at the hourly rates set forth below for professional services performed in accordance with the terms and conditions of this MASTER AGREEMENT:

<b>Staff Category</b>	<b>Hourly Rate</b>
Senior Vice President	\$260.00
Vice President	\$230.00
Senior Associate	\$200.00
Senior Analyst	\$185.00
Analyst	\$150.00
Administrative	\$ 50.00

The maximum amount of compensation to be paid to CONSULTANT under this MASTER AGREEMENT, including both payment for professional services and reimbursable expenses, for the initial term of the MASTER AGREEMENT and the two additional Option Periods, shall not exceed Nine Hundred Seventy Five Thousand Dollars (\$975,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

**2. REIMBURSEABLE EXPENSES.**

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To the extent that they are incurred in performing the Work required by the Approved NTP, CITY shall reimburse CONSULTANT for reimbursable expenses (“Reimbursable Expense”) at actual cost. All Reimbursable Expenses must be presented with documentation. Eligible Reimbursable Expenses are as follows: message and overnight delivery charges, printing costs, and costs directly related to production. Notwithstanding the foregoing sentence, in no event shall the Reimbursable Expense markup with respect to travel and lodging exceed ten (10)%.

**3. SUBCONSULTANTS.** The costs for all subconsultants used by CONSULTANT under this MASTER AGREEMENT shall be paid directly by CONSULTANT.

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**EXHIBIT D**  
**INSURANCE**

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this MASTER AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

**B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

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3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

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- d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

## 2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

## 3. All Coverages

Each insurance policy required by this MASTER AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

## **E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

## **F. Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this MASTER AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to : [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14<sup>th</sup> Floor  
San Jose, CA 95113-1905

## **G. Subcontractors**

D-3

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

Council Agenda: August 19, 2014  
Item No.: 2.8a(1)

**DRAFT-Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final contract.**

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

D-4

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

Council Agenda: August 19, 2014  
Item No.: 2.8a(1)

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**EXHIBIT E**  
**DISCLOSURE STATEMENT**

CONSULTANT shall file with City Clerk a disclosure statement (Statement of Economic Interests -- Form 700) which includes disclosure of the following:

1. Schedule A - 1 -- Investments.
2. Schedule A - 2 -- Investments, Income and Assets of Business Entitles/Trusts.
3. Schedule B -- Interests in Real Property.
4. Schedule C -- Income and Business Positions.
5. Schedule D -- Income - Loans.
6. Schedule E -- Income - Gifts.
7. Schedule F -- Income - Gifts; Travel Payments, Advances and Reimbursements.

E-1

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

Council Agenda: August 19, 2014  
Item No.: 2.8a(1)

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**EXHIBIT F**  
**SPECIAL PROVISIONS**

None.

F-1

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
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**EXHIBIT G**  
**NOTICE OF EXERCISE OF OPTION TO EXTEND**  
**MASTER AGREEMENT FOR CONSULTANT SERVICES**  
**BETWEEN**  
**THE CITY OF SAN JOSE**  
**AND**  
**SEABURY AIRLINE PLANNING GROUP, LLC**

**WHEREAS**, on \_\_\_\_\_, 2014, the CITY OF SAN JOSE ("CITY") and SEABURY AIRLINE PLANNING GROUP, LLC ("CONSULTANT") entered into a Master Agreement for Consultant Services ("MASTER AGREEMENT") which contains an option to extend the term for two (2) additional one-year periods (each an "Option Period"); and

**WHEREAS**, CITY has made the determination to extend the MASTER AGREEMENT for the first/second one-year Option Period.

**NOW, THEREFORE,**

**CITY HEREBY EXERCISES**, pursuant to Section 2 of the MASTER AGREEMENT, the first/second one-year option to extend the term of the MASTER AGREEMENT for the period of \_\_\_\_\_, 201\_\_ through \_\_\_\_\_, 201\_\_. All of the terms and conditions of the MASTER AGREEMENT shall remain in full force and effect during the Option Period.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation of the State of California

\_\_\_\_\_  
KEVIN FISHER  
Sr. Deputy City Attorney

By \_\_\_\_\_  
KIM BECKER AGUIRRE  
Director of Aviation

G-1

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
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Council Agenda: August 19, 2014  
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Date: \_\_\_\_\_

EXHIBIT ONLY

G-2

Agreement for Consulting Services  
Seabury Airline Planning Group, LLC  
T-28197 / 1122865.doc

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Item No.: 2.8a(1)

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